IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of Case

Special Appeal No. 48 of 2004

Date of decision:- 27Th September, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date:- Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Special Appeal No. 48 of 2004

Kailash Nath Singh S/o Sri Jagdesh Singh,
Ex Sentry Operator,
The Bazpur Cooperative Sugar Factory Ltd.,
Bazpur, District Udham Singh Nagar. …..…. Appellant

Versus

Chief Manager,
The Bazpur Cooperative Sugar Factory Ltd.,
Bazpur, District Udham Singh Nagar
(Rudrapur). …….. Respondent

Mr. Mangal Singh Chauhan, Advocate for the appellant.
Mr. C.K. Sharma, Advocate for the respondent.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.

RAJEEV GUPTA C.J. (Oral)

Mr. Mangal Singh Chauhan, Advocate for the appellant.

Mr. C.K. Sharma, Advocate for the respondent.

They are heard.

2. Appellant Kailash Nath Singh has filed this Special Appeal against the impugned judgment dated 19.05.2004 passed in Writ Petition No. 5 of 2000 (S/S) and Writ Petition No. 6 for 2000 (S/S).

3. Respondent Bazpur Cooperative Sugar Factory Ltd. filed the writ petition [W.P. No. 6 of 2000 S/S] for the following reliefs:

> "(a) a writ, order or direction in the nature of certiorari quashing the order passed by respondent no. 1 dated 31.3.95 (being annexure no. 1 to the petition);
>
> (b) any other writ, order or direction as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case; and
>
> (c) award cost of the petition to be paid to the petitioner."

4. Appellant Kailash Nath Singh sought the following reliefs in his Writ Petition No. 5 of 2000 (S/S):

> "(a) to issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 29.10.1997 passed by respondent (Annexure-2 to the writ petition).
>
> (ii) to issue any other suitable writ, order or direction in favour of the petitioner as this Hon'ble Court may thinks fit and proper under the circumstances of the present case.
>
> (iii) to award costs of this petition to the petitioner."

5. Thus, respondent Bazpur Cooperative Sugar Factory Ltd., in its writ petition, was seeking quashing of the order dated 31.03.1995 passed by respondent No. 1 in the writ petition (Deputy Labour Commissioner, Kumaun Region, Haldwani) exercising the powers of the Labour Court under the provisions of U.P. Industrial Disputes Act, whereas the appellant was seeking quashing of the notice dated 29.10.1997 (Annexure No. 2), whereby he was informed about his proposed retirement on attaining the age of 60 years on 27.12.1997.

6. The entire controversy in the two writ petitions [W.P. No. 5 of 2000 (S/S) and W.P. No. 6 of 2000 (S/S)] centered around the date of birth of appellant Kailash Nath Singh. In the employer's record, the appellant's date of birth was recorded as 28.12.1937, whereas the appellant's case was that his correct date of birth was 01.07.1942. The impugned order in Writ Petition No. 6 of 2000 (S/S) directed the employer to correct the appellant's date of birth in their record as 01.07.1942. As the operation of this order was stayed by the High Court in Writ Petition No. 6 of 2000 (S/S), the notice, impugned in appellant's writ petition [W.P. No. 5 of 2000 (S/S)], was issued by the employer proposing to retire the appellant on 27.12.1997 on the basis of his recorded date of birth in the employer's record as 28.12.1937.

7. The learned Single Judge, by the impugned judgment dated 19.05.2004 allowed Writ petition No. 6 of 2000 (S/S) filed by Bazpur Cooperative Sugar Factory Ltd. and quashed the impugned order passed by the Deputy Labour Commissioner. Consequently, the appellant's writ petition [W.P. No. 5 of 2000 (S/S)] was found to be devoid of any merit and as such, was dismissed.

8. Rule 5 of Chapter VIII of the Allahabad High Court Rules expressly bars filing of Special Appeal against the order passed in exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution of India in respect of any judgment, order or award of a tribunal, court of statutory arbitrator.

9. Rule 5 of Chapter VIII of the Allahabad High Court Rules reads as follows:

> "**5. Special appeal.-** An appeal shall lie to the Court from a judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made by a Court subject to the superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its power of superintendence or in the exercise of criminal jurisdiction or in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award (a) of a tribunal, Court of statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution, or (b) of the Government or any Officer or authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act of one Judge."

10. As the order under challenge in the respondent's writ petition [W.P. No. 6 of 2000 (S/S)] was passed by the Deputy Labour Commissioner, Haldwani exercising the powers of the Labour Court under the provisions of U.P. Industrial Disputes Act, the Special Appeal filed by the appellant against the impugned judgment allowing

the respondent' writ petition [W.P. No. 6 of 2000 (S/S)] is not maintainable.

11. As the dismissal of the appellant's writ petition was consequential to the judgment passed in the respondent's writ petition [W.P. No. 6 of 2000 (S/S)], unless the judgment passed in respondent's writ petition [W.P. No. 6 of 2000 (S/S)] is set aside, no relief can be granted in the appellant's writ petition [W.P. No. 5 of 2000 (S/S)].

12. In this view of the matter, the appellant's remedy lies in challenging the judgment passed in the respondent's writ petition [W.P. No. 6 of 2000 (S/S)] by filing a Special Leave Petition before the Apex Court and seeking the relief sought by the appellant in his writ petition [W.P. No. 5 of 2000 (S/S)] also in the said Special Leave Petition.

13. The Special Appeal, therefore, is liable to be dismissed as not maintainable and is hereby dismissed accordingly.

14. No order as to costs.

(Rajesh Tandon, J.) 27.09.2006

(Rajeev Gupta, C.J.) 27.09.2006

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